

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *

JONATHAN LEITE,		* Case No.
	Plaintiff,	* 1:15-cv-00280-PB
		*
v.		* Volume: 1
		* Pages: 1-42
CORRECTIONS OFFICERS MATTHEW GOULET,		* Exhibit: 1
ELMER VAN HOESSEN, MICHAEL BEATON,		*
LYNN MCLAIN, HEATHER MARQUIS,		*
TREVOR DUBE, RHIANNE SNYDER, EDDY		*
L'HEUREUX, JEFFREY SMITH, DWANE		*
SWEATT, YAIR BALDERRAMA, BOB MORIN,		*
EJIKE ESOBE, AND KATHY BERGERON,		*
	Defendants.	*
		*

* * * * *

DEPOSITION OF KATHLEEN DUCHESNE

Deposition taken by counsel at the
Northern Correctional Facility, 138
East Milan Road, Berlin, New Hampshire,
on Friday, September 1, 2017, from
1:40 p.m. to 2:49 p.m.

Court Reporter:
Karen L. Leach, LCR No. 38
(RSA 310-A:179)

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1	I N D E X	1	KATHLEEN DUCHESNE,
2		2	having been duly sworn by Ms. Leach,
3	WITNESS: Kathleen Duchesne	3	was deposed and testified as follows:
4		4	EXAMINATION
5		5	BY MR. KING:
6	EXAMINATION BY:	6	Q. Please state your full name for the record.
7	Mr. King	7	A. Kathleen Duchesne.
8	Ms. Cusack	8	Q. Okay. And as of August 24, 2012, was your
9		9	name Kathleen Bergeron?
10		10	A. Yes.
11	INDEX TO EXHIBITS*	11	Q. Okay. What is your -- strike that.
12	Description	12	Who is your current employer, Officer
13	Duchesne	13	Duchesne?
14	Exhibit 1 Diagram	14	A. NCF. DOC.
15		15	Q. Okay. You're employed here at the Northern
16		16	New Hampshire Correctional Facility?
17		17	A. Yes.
18	NOTE: Exhibit returned to Attorney King.	18	Q. Okay. How long have you been employed at
19		19	the Northern New Hampshire Correctional Facility?
20		20	A. Nine years on July 18 of this year.
21		21	Q. Since -- since 2008 have you held any other
22		22	title here other than corrections officer?
23		23	A. No.
Page 3		Page 5	
1	APPEARANCES:	1	Q. What are your job responsibilities as a
2		2	corrections officer?
3	For the Plaintiff:	3	A. Safety, security, sanitation within the
4	DOUGLAS, LEONARD & GARVEY, P.C.	4	facility and also to protect the public.
5	By: Benjamin King, Esq.	5	Q. And what daily job responsibilities do you
6	-and-	6	have to effect safety, security and sanitation and
7	Megan E. Douglass, Esq.	7	protect the public?
8	14 South Street, Suite 5	8	A. Doing rounds, conducting count. If any
9	Concord, NH 03301	9	inmates are in fear for their safety, they can come to
10	Phone: 603.224.1988	10	me and tell me and they're PAR'd.
11	E-Mail: Benjamin@nhlawoffice.com	11	Q. Okay.
12	Mdouglass@nhlawoffice.com	12	A. Protective custody.
13		13	Q. Okay.
14	For the Defendant:	14	A. I'm also here to protect my coworkers.
15	NEW HAMPSHIRE DEPARTMENT OF JUSTICE	15	Q. I don't want to interrupt you so let me know
16	OFFICE OF THE ATTORNEY GENERAL	16	when you're through with your answer.
17	By: Francis K. Fredericks, Jr., Esq.	17	A. Okay. I'm through.
18	-and-	18	Q. All right. What do you do when you're
19	Lynmarie C. Cusack, Esq.	19	conducting rounds?
20	33 Capitol Street	20	A. I look throughout the unit. I look for
21	Concord, NH 03301	21	sanitation. I look to make sure the inmates appear
22	Phone: 603.271.3658	22	safe. I -- I just look for the safety of all the unit
23	E-Mail: Francis.fredericksjr@doj.nh.gov	23	-- the unit and for the safety of the inmates when I'm
	Lynmarie.cusack@doj.nh.gov		
	STIPULATIONS		
	It is agreed that the deposition shall be taken		
	in the first instance in stenotype and when		
	transcribed may be used for all purposes for which		
	depositions are competent under the Federal Rules of		
	Civil Procedure.		
	Notice, filing, caption and all other formalities		
	are waived. All objections except as to form are		
	reserved and may be taken in court at time of trial.		
	It is further agreed that if the deposition is		
	not signed within thirty (30) days after submission to		
	counsel, the signature of the deponent is waived.		

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1 doing a round.
2 Q. Okay.
3 A. And -- and also my coworker that I'm on the
4 unit with.
5 Q. Okay. When you're doing a round of a
6 housing block, do you look into every cell?
7 A. Typically, yes, I do. Yep. We walk through
8 and we look in.
9 Q. Are there any circumstances when you're
10 doing a round of a housing block when you will not
11 look into every cell?
12 A. No. I -- I always aim to look into every
13 single cell, but sometimes there can be a distraction
14 if an inmate comes up and tries to talk to me, you
15 know, or whatnot. I may miss a cell.
16 Q. Uh-huh.
17 A. But that is not what I look to ever do. I
18 look to look in every cell.
19 Q. Okay. And when you look in the cells, what
20 are you looking for?
21 A. I'm looking to make sure that the inmates
22 are well, and I look to make sure there's only two
23 inmates if it's two-inmate cell. There are some

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1 four-inmate cells. If I see a third inmate in the
2 cell, I do tell them that someone obviously does not
3 belong here. Who is it? But I don't know who lives
4 in every single cell. So there are times when maybe
5 an inmate is in a cell that doesn't belong in that
6 cell that I might not be aware of unless, you know,
7 I'm doing count.
8 Q. All right. So do you when you're doing
9 rounds ever look to see that the right inmates are in
10 the right cell?
11 A. That is what I -- that is what I do, yes.
12 Q. All right. Okay.
13 A. But as I explained, there are a lot of units
14 and there are a lot of inmates, and sometimes I work
15 downstairs a lot, and I know more of the ones that,
16 you know, live downstairs, and sometimes if I work
17 upstairs, and I don't work up there very often, then
18 I'm not aware of every inmate and that he lives in
19 that cell.
20 Q. Okay.
21 A. Inmates are also moving often, you know.
22 Sometimes I'm believing they live in Cell 3, and then
23 you know, they end up getting moved to another one.

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1 Q. Okay. If you think back to August 24, 2012,
2 did you know at that time that Johnathan Gelinas and
3 Ryan Elliot, those two inmates, resided in Cell 9 of F
4 Block?
5 A. I did not know that for sure, no. I don't
6 recall that they were the two that would have lived
7 there.
8 Q. Okay. Do you recall who did reside in Cell
9 9 as of August 24, 2012?
10 A. No, I do not. I mean based on my
11 conversation with the AG's office, I know that they
12 reside there now but at that time --
13 Q. Okay.
14 A. -- when I was doing the round, I would not
15 have known.
16 Q. And you're not supposed to tell me what your
17 communications were with the Attorney General's Office
18 but just telling you that for going forward.
19 But why do you say you would not have known
20 on August 24, 2012, that Johnathan Gelinas and Ryan
21 Elliot inhabited Cell 9?
22 A. It was five years ago, and I would not
23 remember that.

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1 Q. That's fair enough. But I interrupted your
2 answer to me and perhaps I misinterpreted it.
3 Are you saying on August 24, 2012, you would
4 not have known that Ryan Elliot and Johnathan Gelinas
5 were the inhabitants of the Cell 9?
6 A. I don't remember five years ago who lived
7 there.
8 Q. All right. All right. Let's talk about when
9 you were doing count on August 24, 2012, the 5:00
10 count. Do you recall going to say or yelling -- I
11 don't know what form of voice you used -- but yelling
12 at Jonathan Leite, "Hey, Leite. Don't you get up for
13 count anymore?"
14 MS. CUSACK: I'm going to object to the
15 form. Go ahead. You can answer.
16 THE WITNESS: I can answer?
17 MS. CUSACK: Yes.
18 A. Yes. When I got there, everyone else was
19 standing for count.
20 Q. BY MR. KING: Yes.
21 A. So I didn't even yell it. I said, "Leite,
22 what? You don't stand for count anymore?" Like that,
23 and he jumped off his bunk, got to the floor and then

<p style="text-align: right;">Page 10</p> <p>1 he swayed. At that point, the sergeant -- my Sergeant</p> <p>2 Sweat was behind me, and we both knew that there was</p> <p>3 something wrong with Leite. So Sergeant Sweat called</p> <p>4 for first responders, and that's what I remember.</p> <p>5 Q. Okay. Do you remember seeing blood running</p> <p>6 out of Mr. Leite's mouth?</p> <p>7 A. I don't remember seeing blood running out of</p> <p>8 his mouth. I do not.</p> <p>9 Q. Was Sergeant Sweat closer to Jonathan Leite</p> <p>10 than you were?</p> <p>11 A. No, I was standing right in front of him,</p> <p>12 right in front of him. I remember -- what I remember</p> <p>13 is seeing him sway. I have looked at my report, and I</p> <p>14 do know that I said there was a little bit of blood on</p> <p>15 his mouth, but what I remember is seeing him sway.</p> <p>16 Q. All right.</p> <p>17 A. And knowing something was not right.</p> <p>18 Q. Okay.</p> <p>19 A. I also can tell you that we looked at his</p> <p>20 bunk and saw like puke on the top of his bunk and that</p> <p>21 may have been the little bit of blood or whatever that</p> <p>22 I had stated in my report.</p> <p>23 Q. Okay. You saw vomit on his bunk in the</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. All right. So does the -- do the 3:45 --</p> <p>2 does the 3:45 notation reflect that the rounds began</p> <p>3 on or end at 3:45; do you know?</p> <p>4 A. Well, what happens is after we have done the</p> <p>5 rounds, it gets written down. So there is four units,</p> <p>6 and the time cannot be exact because we go into one</p> <p>7 side, go through it and come out the other, and then</p> <p>8 go to the other side.</p> <p>9 Q. Okay.</p> <p>10 A. So --</p> <p>11 Q. So when you write 3:45 on the area rounds</p> <p>12 log, what does that time denote?</p> <p>13 A. I'm saying that the -- that it is</p> <p>14 approximate. I may have been in Fox Block at a</p> <p>15 different time than the 3:45.</p> <p>16 Q. All right.</p> <p>17 A. It's for the whole four units.</p> <p>18 Q. Okay. So let's watch the video.</p> <p>19 MS. CUSACK: Can you pull it forward?</p> <p>20 MR. KING: Yes.</p> <p>21 Q. BY MR. KING: So we are about to watch a</p> <p>22 video from Camera Angle 29 taken at F Block on August</p> <p>23 24, 2012, beginning at 3:45 and 14 seconds p.m.</p>
<p style="text-align: right;">Page 11</p> <p>1 dayroom; is that right?</p> <p>2 A. Yes, after first responders were called.</p> <p>3 MR. KING: Off the record.</p> <p>4 (Discussion off the record.)</p> <p>5 Q. BY MR. KING: Officer Duchesne, I'm going to</p> <p>6 show you a document that we've marked as Dube Exhibit</p> <p>7 1.</p> <p>8 A. Yes.</p> <p>9 Q. This is the area rounds log for August 24,</p> <p>10 2012.</p> <p>11 A. Yes.</p> <p>12 Q. And this reflects that you and Officer Dube</p> <p>13 did rounds that included rounds of F Block at 3:45</p> <p>14 p.m. and 4:50 p.m. on August 24, 2012; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Did you complete this area rounds log?</p> <p>17 A. Yes, that's my handwriting.</p> <p>18 Q. Okay.</p> <p>19 A. For 15 -- yep, for the 15:45 and the 16:45.</p> <p>20 Yep, I did.</p> <p>21 Q. For the 15:45 and the 16:50 do you mean?</p> <p>22 A. Actually the handwriting all appears to be</p> <p>23 mine with the exception of possibly 20:30.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Okay.</p> <p>2 (Video played.)</p> <p>3 Q. BY MR. KING: Now, I have stopped the video</p> <p>4 at 3:40 and 23 seconds p.m., and have we just observed</p> <p>5 you and Officer Dube enter F Block?</p> <p>6 A. Yes.</p> <p>7 Q. And Officer Dube is walking in the direction</p> <p>8 of the stairs that lead to the upper tier of F Block;</p> <p>9 is that correct?</p> <p>10 A. It appears to be so, yes.</p> <p>11 Q. And you and Officer Dube have entered the</p> <p>12 door, and your -- you've taken a right, and you're</p> <p>13 walking towards the cells that line the wall on the</p> <p>14 right of the door that enters into F Block; is that</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. All right. So is it true that you had</p> <p>18 responsibility for doing rounds of the lower tier F</p> <p>19 Block and Officer Dube had responsibility for doing</p> <p>20 rounds of the upper tier in F Block for this round</p> <p>21 that you're doing beginning at 3:40 p.m.?</p> <p>22 A. For this round it appears to be so.</p> <p>23 Q. Okay. I ask you to pay particular attention</p>

1 to your movements when you go -- come into the field
2 of view.
3 **A. Yes.**
4 **(Video played.)**
5 Q. BY MR. KING: Do you know what happened
6 there where we stopped the video at 3:41 and one
7 second p.m., and it appears that you're walking along
8 the row of cells to the right of the door that enters
9 F Block and an inmate was in your way, right?
10 **MS. CUSACK:** I'm going to object to form.
11 Go ahead and answer.
12 **A. Yes. The inmates typically when they see**
13 **officers doing rounds --**
14 Q. BY MR. KING: Yes.
15 **A. -- will back up if they're in the way so**
16 **that we can look inside.**
17 Q. Okay. And that's what it appears he was
18 doing.
19 **A. I don't even know who that inmate is. I**
20 **can't tell from the camera.**
21 **MS. CUSACK:** You went probably too far. You
22 probably went too far. 40 something there, but we can
23 see 3:49. If you're only going a couple seconds, it's

1 that, but go ahead.
2 **MR. KING:** Off the record.
3 **(Discussion off the record.)**
4 Q. BY MR. KING: So we are at 3:40:28, and we
5 can see you in the footage behind the stairwell,
6 right?
7 **A. Yes.**
8 Q. All right. So we'll start watching again.
9 **(Video played.)**
10 Q. BY MR. KING: Okay. And I've stopped it at
11 3:41:04. So we've watched 36 seconds of footage. In
12 those 36 seconds, how many cells do you pass?
13 **A. I told you I can't tell from this view, but**
14 **it appears to be -- could be seven. Could be nine. I**
15 **cannot tell from the footage.**
16 Q. All right. Seven to nine cells. Can you
17 tell what numbers these cells on the left is,
18 specifically the cell where the inmate is pictured
19 being in front of it at 3:41:04?
20 **A. How could I tell that because it's covered?**
21 Q. I don't know. I'm asking you. If you
22 can't --
23 **A. Yes, I'm telling you I can't because the**

1 a tiny movement. You're starting at 15:40 and 33.
2 **MR. KING:** Yep.
3 Q. BY MR. KING: Please play particular
4 attention to you when you come into the field of view.
5 **A. Yes.**
6 **(Video played.)**
7 Q. BY MR. KING: So we just watched from
8 3:40:23 to 3:41:05, and that's about 42 seconds of
9 footage, right?
10 **A. Seems to be.**
11 Q. Okay. And in that time, how many cells did
12 you walk past?
13 **A. Looks like maybe seven. I can't tell from**
14 **that view.**
15 Q. Okay.
16 **A. I'm not sure if there's two back there.**
17 **Two, four, five.**
18 Q. Why don't we go back again and watch it.
19 **(Video played.)**
20 Q. BY MR. KING: All right. Didn't look as if
21 you're in the field of view yet. We are at 3:40 and
22 28 seconds.
23 **MS. CUSACK:** I'm just going to object to

1 **number is at the top of the door.**
2 Q. All right.
3 **A. It's showing half it of just like my -- my**
4 **head is covered by this as well.**
5 Q. Okay.
6 **A. So you can't -- you can't even see me**
7 **looking inside the cells as I walk and look in the**
8 **windows of the doors.**
9 Q. Do you know if this footage depicts you
10 walking in front of Cell No. 9?
11 **A. I do not. I can't tell from that.**
12 Q. All right. But we did establish that over a
13 36-second span, you walked past seven to nine cells;
14 is that right?
15 **A. That's what it appears from what I see**
16 **there.**
17 Q. All right. Beyond looking to see if there
18 are more than two inmates in a cell when you look into
19 the cell during a round, if you do look into the cell,
20 what are you looking for?
21 **A. I am looking for the safety of the inmate.**
22 **I am looking to make sure that everything appears fine**
23 **within the cell. I am looking to make sure no one's**

<p style="text-align: right;">Page 18</p> <p>1 hanging up. I am looking to make sure that there is 2 only two in the cell. 3 Q. Right. 4 A. I am looking to make sure no one's on the 5 floor. 6 Q. Yep. Okay. If you -- if you look into a 7 cell during a round during the daytime and you see an 8 inmate lying down, do you make any further inquiry to 9 make sure the inmate's all right? 10 MS. CUSACK: I'm going to object to the 11 form, but go ahead. 12 A. There are inmates that are sleeping in the 13 cells all day sometimes. Often -- you know, do I walk 14 into every single cell? No, unless I feel that there 15 appears there is a problem. 16 MS. CUSACK: And my objection was when you 17 say lying down. I don't know if you meant on a bed, 18 on a floor. It was just unclear as to where you -- 19 MR. KING: Certainly. 20 Q. BY MR. KING: If -- if you see -- if you 21 look into a cell while doing rounds during the 22 daytime -- 23 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I do not recall. 2 Q. Now, in our prior deposition with your -- 3 with your colleague Officer Dube, we determined that 4 you and he did seven rounds together that day on 5 August 24, 2012, and you can look at the document 6 yourself, but that's just what we determined. 7 A. Okay. 8 Q. Okay. And I was just wondering if on a day 9 such as this when you and another corrections officer 10 do several rounds together, is it customary for you 11 and the other corrections officer to handle the same 12 tier of a block each round, or is it customary to 13 alternate, or is there any custom? 14 MS. CUSACK: I'm going to object to the 15 form. Go ahead. 16 A. Out of respect for each -- other officers, 17 it gets to be tiring always climbing the stairs if the 18 same person was climbing the stairs every time. So 19 sometimes when you walk in a unit I'll say, "I'll go 20 up this time." And then the next time when you're 21 doing a round say, you know, he will say, "I'll go up 22 this time," but that day I don't recall how many times 23 I had gone upstairs and done the rounds downstairs.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. -- and you see an inmate lying down in a 2 bed, do you make any further inquiry to make sure the 3 inmate is all right? 4 A. Yes. You're -- you're looking to make sure 5 that they are breathing, yes. 6 Q. Okay. Do you usually walk past the cells 7 while doing a round at the rate of speed that you 8 walked past them as depicted in this video? 9 MS. CUSACK: I'm going to object to the 10 form. Go ahead. 11 A. I was doing a routine round. That's all I 12 can tell you. I was walking by each and every cell 13 looking inside, and it appeared all was well on that 14 unit. 15 Q. BY MR. KING: Okay. You say it appeared all 16 is well -- all was well on that unit. Do you have a 17 recollection sitting here today of doing the round on 18 August 24, 2012, at 3:40 p.m.? 19 A. I recall that day nothing seemed out of the 20 ordinary on that unit until I did count. 21 Q. Okay. For the round that you marked as 22 occurring at 4:50 p.m., do you know whether you did 23 rounds on the upper tier or the lower tier of F Block?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. A few moments ago we looked at video footage 2 depicting you walking past seven to nine cells, right? 3 A. I told you it appears to be seven to nine. 4 Q. Okay. What is the distance in feet between 5 the first cell that we saw you walking past and the 6 last cell? 7 A. I would have no idea how many feet. I 8 couldn't even guess. I don't know. 9 Q. Okay. Do you know what the distance in feet 10 is from the far end of F Block as depicted on the 11 video to the near end? 12 A. I do not. 13 Q. Now, when you do rounds, you're doing rounds 14 of four different housing blocks, right? 15 A. Yes. 16 Q. How long does it take you to do a round of 17 the housing blocks? 18 A. It's different all the time. It depends if 19 an inmate stops to talk to you and ask you questions, 20 but it can be anywhere from five to 20 minutes. It's 21 hard to say, and also I just want to say sometimes two 22 officers do one side and two officers do the other. 23 So it's not always all four units.</p>

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1 Q. All right. When you say two officers do one
2 side and two officers do the other, what -- what do
3 you mean exactly?
4 A. I just mean I'm trying to explain to you
5 that sometimes -- sometimes if there are more than two
6 officers in upper housing or lower housing, two will
7 take care of one side and two will take care of the
8 other side.
9 Q. Okay.
10 A. On that day I don't know if Officer Dube and
11 myself did all four or the two.
12 Q. If you'd only done the two, which two would
13 those be?
14 A. Echo and Fox.
15 Q. Okay.
16 A. Actually, yeah, it shows on here like even
17 when count was done, there were four officers at that
18 time. So there were two officers. Now, that I look
19 at this again, it was Officer Dube and myself 15:40
20 and the 16:50, and then four of us for count.
21 Q. When you were in the area of Mr. Leite's
22 bunk on August 24, 2012, after he had come down and
23 attempted to stand, did you find any vomit in the area

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1 of Mr. Leite's bunk? You told me -- you told me about
2 the vomit on the bunk. I'm asking you whether you
3 found any vomit on the floor in the area of Mr.
4 Leite's bunk?
5 A. I didn't. I did not see any. I do not
6 recall seeing any.
7 Q. All right.
8 A. What I remember is seeing it on the bunk.
9 Q. All right. And you've seen that the -- the
10 round that you reported as occurring at 3:45 actually
11 began earlier than 3:45 because we have you in F Block
12 at 3:41, right?
13 A. Right.
14 Q. So would you think that the round that you
15 reported as happening at 4:50 would have been begun
16 earlier than 4:50?
17 A. I can't say that.
18 Q. Why not?
19 A. Because I don't know.
20 Q. You didn't have any consistent practice with
21 respect to recording the times that rounds occurred in
22 your filling out the round sheet?
23 A. I told you that when we do rounds, we can be

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1 on another side. So every single round that I do if I
2 go into Fox Block, I'm not going to look and see it's
3 exactly 3:40 and then when I go into Echo and say,
4 okay, it's 3:47 or then when we go across to Hotel,
5 another time. I mean this was the best -- I mean when
6 I got done with the rounds, we get in. We look at the
7 clock. The clock that's on the wall is not always
8 exactly the same as what those cameras are.
9 Q. Uh-huh.
10 A. So it is my best and most accurate when I
11 put it on here. I am doing the very best I can, but
12 it's not perfect.
13 Q. Is it recording -- on the area rounds log,
14 are you recording the time that the round ends?
15 A. I'm not recording when it begins or when it
16 ends. I'm getting back from the round and looking at
17 the clock and giving an approximate time as to when I
18 was on the unit.
19 Q. Okay. All right.
20 A. The fact that that says 3:40 and I have 3:45
21 here to me is pretty accurate.
22 Q. All right. Did you -- Dube Exhibit 1
23 reflects when rounds were done for all -- all four of

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1 the housing blocks, right?
2 A. Yes, it appears to be so.
3 Q. Can you describe for me the window --
4 describe for me the cell door if you would on F Block?
5 A. Can I describe it, or can I just show you?
6 Q. Please, either one.
7 A. Okay. Well, let me take this off here, and
8 I will show you. I'm assuming it's about the same
9 size. It's a little wider than that one. So I'm not
10 going with measurements. I can tell you it's wider
11 than that one right there.
12 Q. All right.
13 MS. CUSACK: For the record, she looked at
14 the entrance door to hearing room in NCF.
15 Q. BY MR. KING: Okay. Would you mind drawing
16 me what a cell door looks like in F Block?
17 (Witness did as directed.)
18 A. It's rectangular.
19 Q. BY MR. KING: Does it have a window on it?
20 A. Explaining what again? What was the
21 question?
22 Q. Does the door have a window on it?
23 A. Yes.

<p style="text-align: right;">Page 26</p> <p>1 Q. Could you depict what the window looks like, 2 please? 3 A. That is what the window looks like. Oh, so 4 you want me to draw the door and then the window? 5 Q. Yes, please. 6 A. My apologies. 7 (Witness did as directed.) 8 A. It is something like that. 9 Q. BY MR. KING: All right. And if you 10 wouldn't mind, if you could just label what is the 11 cell door and label what is the window. 12 MS. CUSACK: Write cell door and then an 13 arrow to it. Then window and arrow to it. 14 (The witness did as directed.) 15 Q. BY MR. KING: Okay. Thank you. Oh, if you 16 could just put your name on it and date it if you 17 wouldn't mind. 18 (Witness did as directed.) 19 A. I'm not an artist. 20 Q. BY MR. KING: Neither am I. 21 A. That window may be a little bit bigger even. 22 MR. KING: Can you mark that, please? 23</p>	<p style="text-align: right;">Page 28</p> <p>1 cells if everything appears fine in the dayroom. 2 Q. Okay. How high is the top bunk off the 3 ground in the dayroom; do you know? 4 A. I do not know exact height. 5 Q. Is it taller than a person? 6 MS. CUSACK: I am going to object to form. 7 MR. KING: Yeah, let me try that again. 8 Q. BY MR. KING: Is it higher than six feet? 9 A. I -- I couldn't -- I couldn't answer that. 10 I don't know if it's higher than six feet. I don't 11 even want to guess. 12 Q. Don't guess. 13 A. I'm not going to. 14 Q. Okay. On or before August 24, 2012, were 15 you familiar with inmate Gelinaz? 16 A. Familiar, no. I mean I know he was an 17 inmate. How do -- you know, I don't know what you 18 mean by familiar. 19 Q. Well, had you had any sort of interactions 20 with him? 21 A. I don't recall having any interactions. Do 22 you mean reports? D reports? Because I don't know. 23 Q. All right. Had you had any interaction with</p>
<p style="text-align: right;">Page 27</p> <p>1 (Duchesne Exhibit 1 was 2 marked for identification.) 3 Q. BY MR. KING: So on the video from Camera 4 Angle 29, we observed you walking up the row of cells 5 on the wall to the right of the door where you enter F 6 Block. Where would you have gone after you walked up 7 that row of cells? 8 A. I would imagine that I went through the back 9 door of the unit. 10 Q. Would you have walked over by the dayroom 11 bunks or not? 12 A. Sometimes I do and sometimes I do not. I do 13 not recall if I did that day. 14 Q. So you may have just walked up the row of 15 cells where we observed you walking -- walking and you 16 may have exited through a door? 17 A. The back door of Fox Block. 18 Q. Okay. What determines whether you walk over 19 by the dayroom bunks during a round or not? 20 A. Every round is different. I can't say I do 21 it exactly the same way every time, but when I walked 22 on the unit, if everything appeared well, the dayroom 23 is right there, I can see when I am walking by the</p>	<p style="text-align: right;">Page 29</p> <p>1 inmate Elliot? 2 A. Not that I recall. 3 Q. Okay. How tall are you if I may ask? 4 A. I am five six. 5 Q. Okay. Were you familiar with Jonathan Leite 6 as of August 24, 2012? 7 A. I did know inmate Leite just because I used 8 to work in visits a lot. Because I worked in visits, 9 I would see him in there. 10 Q. Okay. He would get visits from Ashley 11 Peters? 12 A. That was one person. 13 Q. Yes. All right. 14 A. He had several others on his visiting list. 15 Q. Oh, he did? 16 A. Yes. Yes. 17 Q. Is there anything noteworthy about his 18 visits? 19 A. I don't know what you mean by that. 20 Q. Well, what do you recall about inmate 21 Leite's visits? 22 A. I just recall his kids coming in to see him. 23 I recall a few different women coming in to see him.</p>

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1 I'm not sure what else you're looking for.
2 Q. Who were the women who came to see him?
3 A. I would not remember their names.
4 Q. All right. On August 24, 2012, do you know
5 where -- did you know where inmate Leite slept?
6 A. Did I know where he slept? Did I know that
7 he was dayroom?
8 Q. Yes.
9 A. I don't even recall that. There are so many
10 inmates here, and they move so periodically. Can I
11 say that I recall that he was dayroom bunk at that
12 time? I don't know.
13 Q. Okay.
14 A. But doing count I knew because the count
15 sheet said Leite.
16 Q. Yep. When you look into the window of a
17 cell, can you see the entirety of the cell or not?
18 A. That's kind of hard to answer. I mean you'd
19 have to put your head right up to the cell and cell
20 door, and I have done counts sometimes and missed an
21 inmate that was standing behind the door. So can you
22 see all of what -- everything in the cell? I mean you
23 almost would have to put your head in through the

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1 window or to the window. Sometimes they're standing
2 even against the wall and I was like, you know, I
3 could have missed you during count, you know. You got
4 to stand so I can see you for count.
5 Q. Is there glass on the window?
6 A. No.
7 Q. No. Okay. So the window is open air?
8 A. Yes.
9 Q. Would -- were there any policies or
10 procedures in place at the Northern New Hampshire
11 Correctional Facility that you were aware of as of
12 August 2012 that were designed to prevent inmate
13 violence upon other inmate?
14 A. Were there policies? That's why we had the
15 rounds that we did once an hour.
16 MR. KING: Why don't we take a short break.
17 I'm just going to confer with Attorney Douglass.
18 (Short recess was taken.)
19 Q. BY MR. KING: As of August 24, 2012, did you
20 have access to the video footage of what happened in F
21 Block?
22 A. I think it was a week later that I -- I had
23 seen me walking by the bunk for the 16:50, and I just

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1 remember seeing it in upper housing. I don't recall
2 seeing the 15:45 round until today.
3 Q. Okay. Who showed you the footage of you
4 doing rounds at 16:50?
5 A. I'm not going to remember that. There were
6 some people in upper housing that had access to the
7 video, and I don't know who showed me.
8 Q. All right. But did you have access to the
9 video without someone showing it to you?
10 A. No.
11 Q. Okay. Who had access to the video at -- at
12 -- in August of 2012?
13 A. Who had access to it?
14 Q. Yes.
15 A. I know I can't just pull up videos. So I
16 don't know. Sometimes corporals have access.
17 Sometimes sergeants, lieutenants.
18 Q. So what do you recall the -- the video of
19 doing rounds at 4:50 depicted?
20 A. What do I recall from that?
21 Q. Yes, please.
22 A. All that I remember, and like I said this
23 was five years ago, I don't know who the inmates were,

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1 but prior to me doing a round, two inmates came out of
2 a cell with inmate Leite and like helped him get up on
3 top of his bunk, and then I came in and do a round and
4 walked by that dayroom bunk. Again everything
5 appeared fine when I walked in, you know.
6 Q. So you remember that the video footage that
7 you reviewed showed you walking past the dayroom bunk
8 in the 4:50 round?
9 A. Yes.
10 MR. KING: All right. Off the record.
11 (Discussion off the record.)
12 MS. CUSACK: Can you see that okay?
13 THE WITNESS: Well, the video footage isn't
14 that great.
15 Q. BY MR. KING: All right. So we are going to
16 begin watching video footage of F Block on August 24,
17 2012, taken from Camera Angle 30 beginning at 4:20 and
18 21 seconds.
19 A. Okay.
20 (Video played.)
21 A. I don't even remember seeing that.
22 Q. BY MR. KING: So you just watched Jonathan
23 Leite emerging from Cell No. 9 and collapse to the

Page 34

1 floor, correct?

2 **A. Well, you're telling me that's Jonathan**

3 **Leite, but I don't know that it's him. I can't see**

4 **that it's him.**

5 Q. You -- you just watched an inmate emerge

6 from Cell No. 9 and collapse to the floor, correct?

7 **A. Yes.**

8 Q. All right.

9 **A. I was wrong.**

10 Q. You just said you were wrong. What were you

11 wrong about?

12 **A. I -- again it was five years ago when I saw**

13 **it. I thought it was two inmates that helped him up.**

14 **You're showing me the video now, and I see that it was**

15 **one.**

16 Q. Well, if you -- you will see more -- there

17 were two inmates.

18 **A. Oh, that's all I remember seeing from that.**

19 **(Video played.)**

20 Q. BY MR. KING: Stopping the video at 4:21:09,

21 but you recall seeing other video footage of you doing

22 the rounds that occurred at or about 4:50?

23 **A. Yes.**

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1 Q. With you walking past the --

2 **A. Yeah. I don't even know if I was coming**

3 **downstairs. I just recall seeing video where I walked**

4 **by here right here.**

5 Q. Can you describe that better?

6 **A. When I walked by the dayroom bottom one.**

7 Q. Okay. And you recall seeing that video

8 footage approximately a week after the incident?

9 **A. Approximately.**

10 Q. And again you don't recall who showed it to

11 you?

12 **A. No, sir.**

13 Q. All right. Do you mind if I come around?

14 **A. Feel free, yes.**

15 Q. I'm going to show you a document that's

16 Bates stamped 6 in the defendants' document

17 production. Do you recognize what this form is?

18 **A. Oh, that's a count sheet.**

19 Q. And what is a count sheet?

20 **A. It's a sheet with all the inmates' names on**

21 **it and the cells and the cell numbers for when we do**

22 **count.**

23 Q. Okay. So the count sheet tells you where

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1 the inmates are supposed to be in terms of what cell

2 or bunk they're assigned to, right?

3 **A. Yes.**

4 Q. And this sheet for August 24, 2012, Bates

5 stamped 6 tells you that Jonathan Leite was assigned

6 to the dayroom, right?

7 **A. Yes.**

8 Q. And would you have -- strike that.

9 Would you have had access to this sheet on

10 August 24, 2012?

11 **A. Would I have had access?**

12 Q. Yes.

13 **A. Well, if I didn't do count, I would not have**

14 **had access.**

15 Q. But you did do count, right?

16 **A. Sir, this 20:30, and that is not my**

17 **signature.**

18 Q. All right. All right. So this is a count

19 sheet?

20 **A. From 20:30. Inmate was not there. Leite**

21 **was not there because the count says he was at the**

22 **hospital.**

23 Q. Right. There are count sheets like this

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1 generated for each count?

2 **A. Yes.**

3 Q. So there was a count sheet for the count

4 that occurred at every time on August 24, 2012, right?

5 **A. Yes.**

6 Q. And does each count sheet contain the bed or

7 cell to which the inmate is assigned?

8 **A. Yes.**

9 Q. Okay. And do you review the count sheet

10 each time you do count, or how are these -- how are

11 count sheets generated?

12 **A. Through chorus. Through chorus. So if an**

13 **inmate lives in Cell 2 of Fox Block, and he requests**

14 **to move to Cell 5, then the OIC or person in charge,**

15 **if he says yes to the move, will go into chorus and**

16 **move him from Cell 2 to Cell 5 so that when the count**

17 **is done, the count sheet will be accurate.**

18 Q. Okay.

19 **A. So that means an inmate that lives in Cell 2**

20 **for the 7:05 count in the morning could have moved to**

21 **Cell 5 by 20:30. So that count sheet can change from**

22 **morning to evening.**

23 Q. Okay.

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1 A. So I'm not sure what the question is or if
2 I'm answering it for you to understand, but it's all
3 done through chorus.
4 Q. When you do a count, do you use one of these
5 count sheets?
6 A. Yes. We print them off right before count
7 because if moves have been done, it takes sometimes 15
8 minutes for it to update.
9 Q. All right.
10 MR. KING: All right. Thank you. I don't
11 have anything further.
12 THE WITNESS: Nothing further.
13
14 EXAMINATION
15 BY MS. CUSACK:
16 Q. Question. If you see an inmate sleeping
17 during a round, how -- how do you -- what do you do?
18 A. If I see them sleeping, I let them sleep
19 because if I walk into every cell when an inmate was
20 sleeping and disturbed them, they would not be happy.
21 Q. So what does it take for you to see -- to go
22 into a cell during a -- a particular round?
23 A. What does it take for me to see -- if I saw

1 CERTIFICATE OF WITNESS
2
3 I, KATHLEEN DUCHESNE, have read the foregoing
4 transcript of the deposition taken on Friday,
5 September 1, 2017, at the NORTHERN NEW HAMPSHIRE
6 CORRECTIONAL FACILITY, Berlin, New Hampshire, and do
7 hereby swear/affirm it is an accurate and complete
8 record of my testimony given under oath in the matter
9 of LEITE v. GOULET, including any and all corrections
10 that may appear on those pages so denoted as
11 "Corrections."
12
13
14 KATHLEEN DUCHESNE
15 STATE OF
16 COUNTY OF
17
18 Subscribed and sworn to before me this day
19 of , 2017.
20
21
22 Notary Public J.P.
23 My Commission Expires:

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1 blood, if I saw them hanging, if I didn't see their --
2 their, you know, chest or stomach moving up and down.
3 You can usually tell if an inmate is sleeping or if
4 there's a problem.
5 MS. CUSACK: Okay. Thank you.
6 MR. KING: All set.
7 (The deposition was concluded
8 at 2:49 p.m.)
9
10
11
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1 CORRECTION AND SIGNATURE PAGE
2 DEPOSITION OF: KATHLEEN DUCHESNE
3 DATE OF DEPOSITION: September 1, 2017
4 PAGE LINE NOW READS SHOULD READ
5 _____
6 _____
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19 _____
20 Signed this ____ day of _____, 2017.
21 _____
22 _____
23 KATHLEEN DUCHESNE

C E R T I F I C A T E

I, Karen L. Leach, a Licensed Court
Reporter, Shorthand and Notary Public of the State of
New Hampshire, do hereby certify that the foregoing is
a true and accurate transcript of my stenographic
notes of the deposition of KATHLEEN DUCHESNE, who was
first duly sworn, taken at the place and on the date
hereinbefore set forth.

I further certify that I am neither attorney
nor counsel for, nor related to or employed by any of
the parties to the action in which this deposition was
taken, and further that I am not a relative or
employee of any attorney or counsel employed in this
case, nor am I financially interested in this action.

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